

## **9 FAM 42.33**

### **Diversity Immigrants.**

*(TL:VISA-185; 02-26-1999)*

#### **(a) General**

##### **(1) Eligibility to compete for consideration under section 203(c).**

*(TL:VISA-158; 11-25-96)*

An alien shall be eligible to compete for consideration for visa issuance under INA 203(c) during a fiscal year only if he or she is a native of a low-admission foreign state, as determined by the Attorney General pursuant to INA 203(c)(1)(E)(i), with respect to the fiscal year in question; and if he or she has at least a high school education or its equivalent or, within the five years preceding the date of application for a visa, has two years of work experience in an occupation requiring at least two years training or experience.

[Added by 59 FR 15298, Mar. 31, 1994.]

##### **(2) Definition of “high school education or its equivalent.”**

*(TL:VISA-158; 11-25-96)*

For the purposes of this section, the phrase “high school education or its equivalent” shall mean successful completion of a twelve-year course of elementary and secondary education in the United States or successful completion in another country of a formal course of elementary and secondary education comparable to completion of twelve years’ elementary and secondary education in the United States.

[Added by 59 FR 15298, Mar. 31, 1994.]

##### **(3) Determinations of work experience.**

*(TL:VISA-158; 11-25-96)*

The most recent edition of the Dictionary of Occupational Titles published by the Employment and Training Administration, United States Department of Labor, shall be controlling in determining whether a particular occupation is one “which requires at least 2 years of training or experience” as provided in INA 203(c)(2).

[Added by 59 FR 15298, Mar. 31, 1994.]

#### **(4) Limitation on number of petitions per year.**

*(TL:VISA-158; 11-25-96)*

No more than one petition may be submitted by, or on behalf of, any alien for consideration during any single fiscal year. If two or more petitions for any single fiscal year are submitted by, or on behalf of, any alien, all such petitions shall be void and the alien by or for whom submitted shall not be eligible for consideration for visa issuance during the fiscal year in question.

[Added by 59 FR 15298, Mar. 31, 1994.]

#### **(5) Northern Ireland.**

*(TL:VISA-158; 11-25-96)*

For purposes of determining eligibility to file a petition for consideration under INA 203(c) for a fiscal year, the districts comprising that portion of the United Kingdom of Great Britain and Northern Ireland, known as "Northern Ireland", shall be treated as a separate foreign state. The districts comprising "Northern Ireland" are Antrim, Ards, Armagh, Ballymena, Ballymoney, Banbridge, Belfast, Carrickfergus, Castlereagh, Coleraine, Cookstown, Craigavon, Down, Dungannon, Fermanagh, Larne, Limavady, Lisburn, Londonderry, Magherafelt, Moyle, Newry and Mourne, Newtownabbey, North Down, Omagh, and Strabane.

[Added by 59 FR 15298, Mar. 31, 1994.]

#### **(b) Petition for consideration.**

##### **(1) Form of Petition.**

*(TL:VISA-175; 01-15-1998)*

An alien claiming to be entitled to compete for consideration under INA 203(c) shall file a petition for such consideration. The petition shall consist of a sheet of paper on which shall be typed or legibly printed in the Roman alphabet the petitioner's name; date and place of birth (including city and country, province or other political subdivision of the country); the country of which the alien claims to be a native, if other than the country of birth; name[s] and date[s] and place[s] of birth of spouse and child[ren], if any; a current mailing address; and location of consular office nearest to current residence or, if in the United States, nearest to last foreign residence prior to entry into the United States. The alien shall affix his or her signature on the sheet of paper, using his or her usual signature. The alien shall also affix to the sheet of paper a recent photograph of himself or herself. The photograph shall be 1 and 1/2 inches square (37mm x 37mm) and the alien shall clearly print his or her name in the Roman alphabet on the reverse of the photograph before affixing the photograph to the sheet of paper.

## **(2) Submission of petition.**

### **(i) General.**

*(TL:VISA-158; 11-25-96)*

A petition for consideration for visa issuance under INA 203(c) shall be submitted by mail to the address designated by the Department for that purpose. The Department shall establish a period of not less than thirty days during each fiscal year during which petitions for consideration during the next following fiscal year may be submitted. Each fiscal year, the Department shall give timely notice of both the mailing address and the exact dates of the application period, through publication in the Federal Register and such other methods as will ensure the widest possible dissemination of the information, both abroad and within the United States.

[Added by 59 FR 15298, Mar. 31, 1994.]

### **(ii) Form of mailing.**

*(TL:VISA-158; 11-25-96)*

Petitions for consideration under this section shall be submitted by normal surface or air mail only. Petitions submitted by hand, telegram, FAX, or by any means requiring any form of special handling or acknowledgment of receipt will not be given consideration. The petitioner shall type or print legibly, using the Roman alphabet, on the upper left-hand corner of the envelope in which the petition is mailed his or her full name and mailing address, and the name of the country of which the petitioner is a native, as shown on the petition itself. Envelopes shall be between 6 and 10 inches (15 cm to 25 cm) in length and between 3 and one-half and 4 and one-half inches (9 cm to 11 cm) in width. Envelopes not bearing this information and/or not conforming to the restrictions as to size shall not be processed for consideration.

[Added by 59 FR 15298, Mar. 31, 1994.]

## **(c) Processing of petitions.**

*(TL:VISA-158; 11-25-96)*

Envelopes received at the mailing address during the application period established for the fiscal year in question and meeting the requirements of subsection (b) shall be assigned a number in a separate numerical sequence established for each regional area specified in INA 203(c)(1)(F). Upon completion of the numbering of all envelopes, all numbers assigned for each region shall be separately rank-ordered at random by a computer using standard computer software for this purpose. The Department shall then select in the rank orders determined by the computer program a quantity of envelopes for each region estimated to be sufficient to ensure, to the

extent possible, usage of all immigrant visas authorized under INA 203(c) for the fiscal year in question.

[Added by 59 FR 15298, Mar. 31, 1994.]

#### **(d) Approval of petitions.**

*(TL:VISA-158; 11-25-96)*

Envelopes selected pursuant to subsection (c) of this section shall be opened and reviewed. Petitions which are legible and contain the information specified in subsection (b) of this section shall be approved for further consideration.

[Added by 59 FR 15298, Mar. 31, 1994.]

#### **(e) Validity of approved petitions.**

*(TL:VISA-158; 11-25-96)*

A petition approved pursuant to subsection (d) of this section shall be valid for a period not to exceed Midnight of the last day of the fiscal year for which the petition was submitted.

[Added by 59 FR 15298, Mar. 31, 1994.]

#### **(f) Order of consideration.**

*(TL:VISA-158; 11-25-96)*

Further consideration for visa issuance of aliens whose petitions have been approved pursuant to paragraph (d) of this section shall be in the regional rank orders established pursuant to subsection (c) of this section.

[Added by 59 FR 15298, Mar. 31, 1994.]

#### **(g) Further Processing.**

*(TL:VISA-158; 11-25-96)*

The Department shall inform applicants whose petitions have been approved pursuant to subsection (d) of this section of the steps necessary to meet the requirements of INA 222(b) in order to apply formally for an immigrant visa.

[Added by 59 FR 15298, Mar. 31, 1994.]

**(h) Maintenance of information concerning petitioners who are visa recipients.**

*(TL:VISA-175; 01-15-1998)*

(1) The Department shall compile and maintain the following information concerning petitioners to whom immigrant visas are issued under INA 203(c):

- (i) age;
- (ii) country of birth;
- (iii) marital status;
- (iv) sex;
- (v) level of education; and
- (vi) occupation and level of occupational qualification.

(2) Names of visa recipients shall not be maintained in connection with this information and the information shall be compiled and maintained in such form that the identity of visa recipients cannot be determined therefrom.

[Added by 59 FR 15298, Mar. 31, 1994.]

**(i) Processing Fee.**

*(TL:VISA-175; 01-15-1998)*

In addition to collecting the immigrant visa application and, if applicable, issuance fees, as provided in section 42.71(b) of this Part, the consular officer shall also collect from each applicant for a visa under the Diversity Immigrant Visa Program such processing fee as the Secretary of State shall prescribe.

[Added by 61 FR 1523, Jan. 22, 1996.]

---

## **9 FAM 42.33 Related Statutory Provisions**

### **INA 203(c)**

*(TL:VISA-158; 11-25-96)*

#### **(c) DIVERSITY IMMIGRANTS.—**

(1) **IN GENERAL.**—Except as provided in paragraph (2), aliens subject to the worldwide level specified in section 201(e) for diversity immigrants shall be allotted visas each fiscal year as follows:

(A) **DETERMINATION OF PREFERENCE IMMIGRATION.**—The Attorney General shall determine for the most recent previous 5-fiscal-year period for which data are available, the total number of aliens who are natives of each foreign state and who (i) were admitted or otherwise provided lawful permanent resident status (other than under this subsection) and (ii) were subject to the numerical limitations of section 201(a) (other than paragraph (3) thereof) or who were admitted or otherwise provided lawful permanent resident status as an immediate relative or other alien described in section 201(b)(2).

(B) **IDENTIFICATION OF HIGH-ADMISSION AND LOW-ADMISSION STATES.**—The Attorney General—

(i) shall identify—

(I) each region (each in this paragraph referred to as a “high-admission region”) for which the total of the numbers determined under subparagraph (A) for states in the region is greater than 1/6 of the total of all such numbers, and

(II) each other region (each in this paragraph referred to as a “low-admission region”); and

(ii) shall identify—

(I) each foreign state for which the number determined under subparagraph (A) is greater than 50,000 (each such state in this paragraph referred to as a “high-admission state”), and

(II) each other foreign state (each such state in this paragraph referred to as a “low-admission state”).

(C) **DETERMINATION OF PERCENTAGE OF WORLDWIDE IMMIGRATION ATTRIBUTABLE TO HIGH-ADMISSION REGIONS.**—The Attorney General shall determine the percentage of the total of the numbers determined under subparagraph (A) that are numbers for foreign states in

high-admission regions.

(D) DETERMINATION OF REGIONAL POPULATIONS EXCLUDING HIGH-ADMISSION STATES AND RATIOS OF POPULATIONS OF REGIONS WITHIN LOW-ADMISSION REGIONS AND HIGH-ADMISSION REGIONS.—The Attorney General shall determine—

(i) based on available estimates for each region, the total population of each region not including the population of any high-admission state;

(ii) for each low-admission region, the ratio of the population of the region determined under clause (i) to the total of the populations determined under such clause for all the low-admission regions; and

(iii) for each high-admission region, the ratio of the population of the region determined under clause (i) to the total of the populations determined under such clause for all the high-admission regions.

(E) DISTRIBUTION OF VISAS.—

(i) NO VISAS FOR NATIVES OF HIGH-ADMISSION STATES.—The percentage of visas made available under this paragraph to natives of a high-admission state is 0.

(ii) FOR LOW-ADMISSION STATES IN LOW-ADMISSION REGIONS.—Subject to clauses (iv) and (v), the percentage of visas made available under this paragraph to natives (other than natives of a high-admission state) in a low-admission region is the product of—

(I) the percentage determined under subparagraph (C), and

(II) the population ratio for that region determined under subparagraph (D)(ii).

(iii) FOR LOW-ADMISSION STATES IN HIGH-ADMISSION REGIONS.—Subject to clauses (iv) and (v), the percentage of visas made available under this paragraph to natives (other than natives of a high-admission state) in a high-admission region is the product of—

(I) 100 percent minus the percentage determined under subparagraph (C), and

(II) the population ratio for that region determined under subparagraph (D)(iii).

(iv) REDISTRIBUTION OF UNUSED VISA NUMBERS.—If the Secretary of State estimates that the number of immigrant visas to be issued to natives in any region for a fiscal year under this paragraph is less than the number of immigrant visas made available to such natives under this paragraph for the fiscal year, subject to clause (v), the excess visa numbers

shall be made available to natives (other than natives of a high-admission state) of the other regions in proportion to the percentages otherwise specified in clauses (ii) and (iii).

(v) **LIMITATION ON VISAS FOR NATIVES OF A SINGLE FOREIGN STATE.**—The percentage of visas made available under this paragraph to natives of any single foreign state for any fiscal year shall not exceed 7 per cent.

(F) **REGION DEFINED.**—Only for purposes of administering the diversity program under this subsection, Northern Ireland shall be treated as a separate foreign state, each colony or other component or dependent area of a foreign state overseas from the foreign state, shall be treated as part of the foreign state, and the areas described in each of the following clauses shall be considered to be a separate region:

- (i) Africa.
- (ii) Asia.
- (iii) Europe.
- (iv) North America (other than Mexico).
- (v) Oceania.
- (vi) South America, Mexico, Central America, and the Caribbean.

(2) **REQUIREMENT OF EDUCATION OR WORK EXPERIENCE.**—An alien is not eligible for a visa under this subsection unless the alien—

(A) has at least a high school education or its equivalent, or

(B) has, within 5 years of the date of application for a visa under this subsection, at least 2 years of work experience in an occupation which requires at least 2 years of training or experience.

(3) **MAINTENANCE OF INFORMATION.**—The Secretary of State shall maintain information on the age, occupation, education level, and other relevant characteristics of immigrants issued visas under this subsection.

[Added by sec. 131 of Pub. L. 101-649, Nov. 29, 1990.]



## **INA 204, in part**

(TL:VISA-185; 02-26-1999)

### **204 PROCEDURE FOR GRANTING IMMIGRANT STATUS**

#### **(a)(1)(G)(ii)(II)**

*Aliens who qualify, through random selection, for a visa under section 203(c) shall remain eligible to receive such visa only through the end of the specific fiscal year for which they were selected.*

### **SECTION 1 OF PUB. L. 105-360**

(TL:VISA:185; 02-26-1999)

#### **SECTION 1. EXTENSION INTO FISCAL YEAR 1999 OF VISA PROCESSING PERIOD FOR DIVERSITY APPLICANTS WHOSE VISA PROCESSING WAS SUSPENDED DURING FISCAL YEAR 1998 DUE TO EMBASSY BOMBINGS.**

##### **(a) EXTENSION OF PERIOD—**

*(1) IN GENERAL—Notwithstanding clause (ii)(II) of section 204(a)(1)(G) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(G)), in the case of an alien described in paragraph (1) or (2) of subsection (b)—*

*(A) the petition filed for classification under section 203(c) of such Act (8 U.S.C. 1153(c) for fiscal year 1998 is deemed approved for processing for fiscal year 1999, without the payment of an additional \$75 fee; and*

*(B) the priority rank for such an alien for such classification for fiscal year 1999 is the earliest priority rank established for such classification for such fiscal year.*

*(2) VISAS CHARGED TO FISCAL YEAR 1999—Immigrant visas made available pursuant paragraph (1) shall be charged to fiscal year 1999.*

##### **(b) ALIENS ELIGIBLE FOR BENEFITS—**

*(1) PETITIONING ALIEN—An alien described in this paragraph is an alien who—*

*(A) had a petition approved for processing under section 203(c) of the Immigration and Nationality Act (8 U.S.C. 1153(c)) for fiscal year 1998; and*

*(B)(i) had been scheduled for an immigrant visa interview on or after August 6, 1998, and before October 1, 1998, at the United States embassy in Nairobi, Kenya, at the United States embassy in Dar Es Salaam, Tanza-*

*nia, or at any other United States visa processing post designated by the Secretary of State as a post at which immigrant visa services were suspended in fiscal year 1998 at such an embassy or post.*

*(ii) had been interviewed for such a visa but refused issuance under section 221(g)) of such Act (8 U.S.C. 1201(g)) during fiscal year 1998 at such an embassy or post.*

*(2) FAMILY MEMBERS—An alien described in this paragraph is an alien who—*

*(A) is a family member described in section 203(d) of the Immigration and Nationality Act (8 U.S.C. 1153(d)) of an alien described in paragraph (1); or*

*(B)(i) is a family member described in such section of an alien described in paragraph (1)(A); and*

*(ii) meets the requirement of clause (i) or (ii) of paragraph (1)(B).*

**SEC. 636 OF PUB. L. 104-208, IN PART**

*(TL:VISA-159; 12-20-96)*

**Sec. 636. FEE FOR DIVERSITY IMMIGRANT LOTTERY.**

The Secretary of State may establish a fee to be paid by each applicant for an immigrant visa described in section 203(c) of the Immigration and Nationality Act. Such fee may be set at a level that will ensure recovery of the cost to the Department of State of allocating visas under such section, including the cost of processing all applications thereunder. All fees collected under this section shall be deposited as an offsetting collection to any Department of State appropriation and shall remain available for obligations until expended. The provisions of the Act of August 18, 1856 (11 Stat. 58; 22 U.S.C. 4212-4214), concerning accounting for consular fees, shall not apply to fees collected under this section.